United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-1393

to be argued by
JOE TRUMAN BOYD

B
P/S.

UNITED STATES COURT OF APPEALS
For the Second Circuit
Docket No. 75-1393

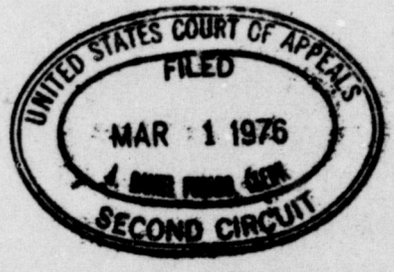
UNITED STATES OF AMERICA,
Appellee,

-against-

JOE TRUMAN BOYD, ET AL,
Defendant-Appellant.

On Appeal From The United States District Court
For The Southern District of New York

BRIEF FOR DEFENDANT-APPELLANT
JOE TRUMAN BOYD



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IN THE UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

JOE TRUMAN BOYD

Appellant

VS

UNITED STATES OF AMERICA

Appellee

NO . 75 - 1393

BRIEF FOR APPELLANT

TO THE HONORABLE COURT :

NOW COMES the Appellant, Joe Truman Boyd, and respectfully files this Brief .

STATEMENT OF THE NATURE AND RESULT OF THE CASE

THIS IS AN ACTION BROUGHT by the United States in the Southern District of New York Federal Court before Judge Pollack, J. Appellant Boyd was charged with a conspiracy to violate the Securities Regulatations pertaining to Registration. The Appellant was tried, along with twelve other defendants. The Jury found this defendant and four others guilty, bringing back a Not Guilty verdict as to seven other defendants. Three defendants pled guilty.

On December 2, 1976, the trial Court entered its judgement finding this Defendant - Appellant guilty as charged and it is from this judgement that we take our appeal.

BRIEF FOR DEFENDANT-APPELLANT JOE TRUMAN BOYD

THE CASE HISTORY

In January, 1970, Defendant Boyd traveled to Reno Nevada and there met one Roger Bissett and one Emerson Titlow. After negotiation with Mr. Titlow, Boyd went under agreement, for himself and others, to purchase a 1915 Shell Corporation called Goldfield-Candelaria Mining Cooperative, Inc. Part of the obligations of the seller was that the Corporation be in good standing with the State of Nevada; that all franchise taxes oweing from date of Incorporation through date of purchase be paid; that certain charter amendments be done and approved by the State and, most important, that Legal Opinion issue to Boyd & Associates as to the "Exemptions" to the Securities Act be furnished. The requirements were all met, including an absolute Opinion from Bissett that the Stock, issued in 1915, was Exempt from Registration and was free-trading in every respect. (This document has been lost, stolen or strayed, due to the passage of time)! One of the requirements was for a name change to Select Enterprises, Inc. Boyd, never having dealt in the Securities market and being dumb and naive as to that phase, asked one Boyd asked , Mr. Jim Joiner, how to get the stock quoted; Joiner introduced Boyd to one Bernie Acton, at that time the controlling person of Pioneer Development Co, and was having a successful market. Acton, in his turn, introduced Boyd to one Alan Segal as the number one Market Maker in the Over the Counter Markets. Mr. Segal examined the paper work available on Goldfield/Select, including Bissetts Opinion Letter, and expressed the Opinion to Boyd that it met all requirments for trading, including an absolute exemption from the Securities laws. Mr. Segal informed Boyd as to the requirements necessary for him Segal, to undertake market making. Amongest those requirements was that Boyd arrange to have substantial assets placed into Select and that Select have a program outlined that would assure the Public Investors that Select would be a

profitable venture.

Because of the unscrupulousness and dishonesty (Segals words) of Acton and others, he (Segal) was worried about Boyd 'double crossing' him and selling control stock into the market. Segal stated that he would have to spend an awful large amount of his money to attain a good, stable market. Boyd agreed, for himself and associates, to make sure that the control stock was unavailable to the market and so satisfied Segal by the now famous [LOCK-BOX]. Into that box went approximately seven hundred and fifty thousand shares of Goldfield-Candelaria certificates that had been issued in 1915 and which both Bissett and Segal had assured Boyd were exempt from Registration. Sound Assets were put into Select as per Segals requests and an inner management financial statement reflecting these assets was produced. Segal then started the market on Select and the management of Select commenced its program of acquisition (this plan met Segals earlier requirments)

Segal immediately informed Boyd that a Certified Financial Statement would eventually be required (not by the SEC, but by the brokers in the market, for their customers). Boyd then sought out several CPAs relative to this, and eventually retained for the Corporation Mr. Barnett to certify the statement. Mr. Barnett certified the statement, requesting of the Company various instruments which were duly made available to him, including various appraisals, geology reports, engineering reports, legal opinions etc. After much investigation and work, Barnett said that he was ready to certify, but needed certain documentation from Selects Board, so a meeting was called in the Law offices of Bob Ford, Abilene , Texas, and that Board documentation was furnished and all of Mr. Barnetts requirements were made with the exception of one appraisal report on California property. The appraisal report available (Marquardt) covered part of the property in question plus other pro-

perty alongside the Select property and did not refer to a part of the Select property, although it did cover the general area. Mr. Marquardt was contacted by someone present at the meeting and agreed to send a telegram covering the balance of the propererty and said that all the property in that area was substantially of the same value. Thereafter said telegram was received and made available to Barnett and Barnett delivered the Certified statement to Boyd in Dallas, as he, Barnett, was on one leg of his vacation.

Boyd immediately made available to the public through brokers, the SEC, stockholders and others, not only the Financial Statement, but also a copy with each statement of every item, of whatsoever description, available to Select. These included all the deeds that Select owned, as well as legal opinions on the properties, all the Geology and Engineering reports, every single appraisal on every single property it owned, as well as various and sundry other items of interest.

Select totally made available all information it possessed in answer to the SECs admonition that the Act was a full disclosure Act. Select had received an inquiry from the SECs Houston office and discussing that inquiry with the Attorneys it had used (Bissett, Ford, Selwyn Webber, Lucious Bunton and others); it was decided that Select was in need of more expert legal assistance. Webber had attended law school with a member of a prestigious Washington Law firm, Clifford, Warnke, Glass etal, and a conference was arranged by Webber with Mr. Spradlin of that firm. Conferences were then held, in Washington, with Mr. Spradlin, as well as Mr. Clifford and others. That firm undertook an investigation of the Select matter, sending one man to a meeting (FT WORTH, TEX.) with the SEC

At meetings between Boyd and others with the Ft. Worth SEC, Boyd advised the SEC (Hewitt) that a news release from the SEC to the news media advising that SElect would be suspended from trading for ten days would either be revoked or Select would seek injunctive releif from the courts against the illegal moves of the SEC. Hewitt then advised Boyd/Select that the SEC owed them an appology; that they were unaware of the Select Financial data available to the Public, that the SEC would not any longer harass Select; that Select should continue trading and proceed with its program of acquisition.

Select then tried to get its stock back onto the "PINK SHEETS". In every instance that a broker would make an application to the sheets, they would receive a visit from the SEC (which has control of the brokers license) and be informed that they (SEC) did not want Select to trade. When Boyd/Select would question SEC about this, SEC would inform Boyd/Select that there was no suspension; that Select was free to trade; that SEC had nothing to do with our brokers, markets, pink sheets, nor were they in any manner interfering in the business of Select.

Boyd sought Counsel to attack this insidious campaign of SEC without avail, finally having the services of one attorney Godfrey Sullivan with some expertise in Stock matters. The SEC had by this time perfected a civil suit against Select in the New York Federal Courts. Select answered and went to trial. The SEC sought a permanent injunction; the court refused, stating that SEC had not produced evidence sufficient for the relief sought. At a later date, permanent injunction was granted SEC by default, neither Boyd nor Select having the necessary monies to afford further hearings.

The Government then spent five years and finally decided to bring Criminal charges, even though Select had been defunct as an operating or

trading entity all that time. In February 1975 the Grand Jury in New York handed down their indictment and the case proceeded to trial in late September 1975, with three of the seventeen defendants pleading guilty before trial, one severance and one fall-out (Webber) due to illness. Of the remaining twelve defendants, five (all from Texas but one, and Oklahoman) were found guilty by Jury, and seven were found not guilty. Sentencing was held on December 2, 1975, at which Boyd was sentenced to five years on each of 53 counts, sentencing to run concurrent, Boyd was remanded on thirty five thousand dollar bond.

APPELLANT BOYD HEREBY ADOPTS BY REFERENCE THE ENTIRE APPEALS BRIEFS OF ALL OTHER DEFENDANTS TO THIS APPEAL

BRIEF FOR DEFENDANT- APPELLANT JOE TRUMAN BOYD

ARGUMENT

POINT 1

THE FAILURE OF THE TRIAL JUDGE TO REINSTRUCT THE JURY AS TO THE POSSIBLE EXEMPTIONS TO THE SECURITIES ACT WAS REVERSIBLE ERROR.

Immediately upon completeing its charge to the Jury, the Court excused the Jury in order to hear objections to the charge ,. Upon hearing the objections from Counsel, the Court, as to the failure to instruct the jury in this important area, could only say that the objection was not timely. The only time the objection could be made was after the Court had charged ; no one present was aware of the error until same was made.

Again, this point was so important, not only to these defendants, but also to the Jury, that they sent notes to the Court on two occasions, asking for clarification on this point.

On both these VERY IMPORTANT occasions, the COurt refused to enlighten the Jury as to possible exemptions. Appellant would show the Court that in evidence both the applications to the Pink Sheets stated that the application was being made relying on exemptions to the Registration requirements to the Act. Again, Boyd, before the SEC in Ft Worth repeatedly claimed exemptions. The SEC never denied Exemptions; only stating that Boyds personal stock was 'insider' stock. The Govt. did not charge this Appellant with an insider infraction, but charged him instead under the unregistered rule. APPELLANTS CONVICTION SHOULD BE REVERSED.

BRIEF FOR DEFENDANT - APPELLANT JOE TRUMAN BOYD

ARGUMENT

POINT #1

MULTIPLE CONSPIRACIES CAUSED SO MUCH OVERFLOW MATE RIAL THAT THE COURT ERRED IN NOT INSTRUCTING THE JURY ON THE MULTIPLE CONSPIRACY FEATURE.

Under this heading, the number of conspiracies brought out in trial as th the various defendants that it makes BERTOLOTTI and others look sick in comparison. Actually, the conspiracies are so numerous that they can only be listed under Headings and Sub-Headings, thus :

BANK LOAN CONSPIRACIES :

(A) SEGAL AND THE NEW YORK CROUD

Both Segal and his co-horts used the Select stock as a means to make numerous loans from the New York banks, brokers, and others.

(B) JOINER AND HIS EMPLOYEE-COHORTS

Joiners testimony that he and others of his employesss made bank loans PRIOR to the Select thing, utilizing Boyd, as well as those bank transactions in which he (Joiner) was involved after the commencement of the Select operation.

(C) MULLENAX AND HIS INSURANCE BANK ACCOUNT LOAN ARRANGEMENTS

Its plain to see that Mullenax never even heard of Select or had anything to do with it as an entity; he merely found someone with some stock (negotiable) that he could put in his lines of credit (arranged where he and Rouse had their Insurance Companies monies deposited). Any Stock would have, and did, serve his purpose....witness the Pig'n Whistle.

The various bank loans were enough to influence the jury to bring in guilty verdicts, making the Select deal look like a multi-hundreds - of thousands of dollars rip off. If we are to beleive the Fifth Circuit Court in McClure vs First National Bank of Lubbock, borrowing mony from Banks on stock is not and has nothing to do with selling

ungegistered securities, unless the bank has to repossess said stock and then sell it out;; there was no evidence presented at the trial of a single solitary bank ever disposing of a share of stock...to the contrary, Mullenax's bankers all said that they had not.

THE CONSPIRACY TO USE THE SELECT STOCK TO COVER VARIOUS 'SHORTS' POSITIONS OF SEGAL AND OTHERS.

(A) SEGALS TESTIMONY IS THAT HE USED THE Select stock to cover his shortages at various Brokers and that they in turn "ripped him off by selling said stock into the market.

(B) Segals testimony was that he 'loaned' stock to Gardner to cover his 'shorts'.

THE NEVADA CONSPIRACIES TO SELL A HUNDRED DOLLAR CHARTER FOR FORTY THOUSAND DOLLARS($40,000.00)
If, as the Government has charged, this whole thing was a conspiracy, then certainly Boyd was defrauded out of $40,000.00 by the Nevada group selling him a simple State charter and claiming same was exempt from SEC.

THE CONSPIRACIES TO ACQUIRE SELECT STOCK FOR PROPERTIES:

(A) GOODLOE NEEDED MONIES TO DEVELOP BOTH Mica and Oil and Gas Properties, so traded them to Select for Select Stock.

(B) The California crowd traded Imperial & Riverside County lands for Select stock.

THE CHAPEL CONSPIRACIES
It slipped past us, but Chapel was also VERY much involved in and under the sub-heading of Bank loans. He made numerous Bank loans and covered existing loans. Again, there was no evidence that these loans were called (ie; McClure). Addittionally, Chapels testimony under Cross was that he did conspire to (successfully) trade a worthless business management firm to Select, lying at all times to Select as to the value of same.

JOINER CONSPIRACIES TO TRADE HIS LETTERED STOCK FOR PROPERTIES.
Joiner's testimony was that he had Baker and other scouring the Country for trades for his lettered stock, which he had conned off Boyd. He was successful in at least one instance.

BRIEF FOR DEFENDANT JOE TRUMAN BOYD

THE JOINER CONSPIRACY TO STEAL ALL OF THE SELECT STOCK FROM BOYD

In 1970 Joiner commenced serving a final judgement of conviction on a Lubbock, Texas conviction. Upon his leaving the Select/Boyd offices in Dallas, he STOLE everything in sight, sending same to his-then wife with instructions that his theft was for her and the kids. Boyd found out about it and had Mrs Joiner return same to Selects offices. Joiners note to Bette, his wife, follows.

" Bette---There are 40,000 shares of free trading Stock of international Tungsten & Mineral Corp. that you can sell to any Broker.
There are 40,000 shares of Select Enterprise Stock in Ralp Hunters name. Ed Hunter will help you do something with it, give Ed 25% of all the moaney he gets for you dont trust him toofar. (these are Joiners underlines).
The other stock in her is very important Stock to you someday. I will tell you when, where and how to do it when the time comes. This stock is to be put in a safe place for you and the kids. (Also there will be more)
Also handle all this on a partnership basis with you and your dad.
Nobody Else
Joe Can help you on this some and also (Mr Sullivan)(The attorney)
Watch the Attorney
Joe is O.K. (but watch him some)
Bruce can help you some
P.S. Trust Nobody (But Yourself) "

Where Joiner mentions , in his third paragrah, "The other Stock in here is very important--- ", he wasnt just kidding around. "The other stock" mentioned was all of the original Goldfield-Candelaria stock out of the now famous "Lock Box". Boyd has the original note above quoted verbatim, and in its entirety.

As brought out in 'Bertolotti' before the 2d Circuit, page 6421, "It may generally be conceded that the possibility of prejudice resulting from a variance increases with the number of defendants tried and the number of conspiracies proven." Here we have a final number to the Jury of twelve; the number of conspiracies is conjectural, but certainly of a number sufficient for a 'Bertolotti' ruling. APPELLANTS CONVICTION SHOULD BE REVERSED.

BRIEF FOR DEFENDANT - APPELLANT JOE TRUMAN BOYD

ARGUMENT

POINT III

THE TRIAL COURT ERRED IN CHARGING THE JURY THAT "-------AN OFFER OR SALE OF A SECURITY INCLUDES-------OR WHEN IT IS PLEDGED TO SECURE A LOAN FROM A BANK OR OTHER LENDER-------"

The use of Select stock as collateral for bank loans and to 'shore up' existing loans, both banks and other lenders, comprised the overwhelming majority of the 'bad deeds' in the minds of the jury. The record indicates that the market consisted only of Segal the market-maker selling some nineteen hundred and fifty shares and buying two thousand shares. All of the balance of the 'bad deeds' (in the jury's mind) was the various large sums of monies discussed by various witnesses derived from loans either made with Select as initial collateral or Select being put up at a later date to 'shore up' prior loans. If all the evidence relating to loans is removed from the record, the only thing left for the Jury to decide (from a purely economic standpoint) are the Segal sales/purchases, and that leaves a 'net' of fifty shares to the 'good guys' (the Public.)

Appellant Boyd would say to this Court that this Jury would have found not one single person guilty of one count (much less 53 counts) had they not considered these large sums of 'borrowed' monies. The overflow of damning (though legal) evidence is horrendous. The law, by now, is well known, as in McClure v. First National Bank Of Lubbock, Texas, 497 F. 2d 490 (5th Circuit). In that decision it is unequivically stated that a pledge of stock for a loan is not a sale unless the bank forecloses and thereafter sells said stock to the public. APPELLANTS CONVICTION SHOULD BE REVERSED

BRIEF FOR DEFENDANT-APPELLANT JOE TRUMAN BOYD

ILLEGAL ACTS OF THE GOVERNMENT / RE: SELECT INC.

The original order of the Securities and Exchange Commission was an ILLEGAL ORDER, in that it purported to issue because of [Insufficient financial information] and the members of the Commission themselves admitted to Boyd and his counsel that Select had made all its financial information available. They even promised Select that there would be no further action taken against Select and done everything in their power to allay Selects suspicians. Those members of the Commission lied to Select, its Officers, Agents and Attorneys! It follows that if the original order was based on an illegal order, and if no further orders were forthcoming for investigation of Select, any Supoenas issued under that original illegal order of investigation and all information gathered thereunder, were illegally obtained; and what is the Governments explanation of the vast amount of time allowed to pass between the alleged Select activities and indictment?

U.S. Attorney MacDonald lied to defendant Boyd during the Grand Jury, having supoenied Boyd to testify to that body, and upon being informed by Boyd that Boyd did not have the money even for a ticket to New York, advised Boyd that the Government would see that a ticket was available to Boyd at the U.S. Marshals office in Midland, Tx. Boyd, upon checking on two different occasions that MacDonald had promised the ticket, was told by the Marshal, that there was nothing there for him (Boyd). MacDonald also lied on the same subject plus others to Boyds attorney Houston!

Upon the arraignment in New York the Court granted PR bonds as to all defendants and in the course of that hearing, the Court stated that it had no objections as to travel restrictions including the Continental U.S. snd asked MacDonald about it and the answer was that the Government had no object-

tions. (Only certain defendants discussed the restriction problem with the Court. Those were the only ones the Court made any ruling on.) When Boyd filled out his PR Bond and presented same to MacDonald for approval, MacDonald changed Boyds travel restrictions to only allow Texas and the Southern District of New York, When Boyd discussed this with Mac Donald (who, by the way, refused Boyd a conference until he, MacDonald, could get witnesses into the room) MacDonald told Boyd that the Judges ruling was only as to those who discussed it with the Court. MacDonald also said that everyone else was restricted as to their home and SD. of New York. However, an examination of the transcript of that hearing shows this not to be the fact! Even had it been a fact, MacDonald gave some of the defendants there wider discretion as to travel than others among the numerous ones who had not discussed restrictions with the Court, In this instance MacDonald usurped the Powers of the Court. At a later date (just a few days later), Boyd, wishing to have a vonference with his attorneys in Hobbs, New Mexico, called the C Court, Judge Lasker, In New York and reported MacDonalds stunt as to the Bonds travel restrictions and asked the Court for permission to travel to Hobbs to visit my counsel, The Court, of course, readily acceded to this request, and properly so, stating (a direct Quote), "I'm giving you permission to visit your Attorney, who you tell me is in New Mexico. Where is he in New Mexico"? A. from Boyd "Hobbs, N.M., his name is Houston." Judge Lasker, "----if there is any further problem with it, I'll be glad to consider it." Once in Hobbs in the residence of Mr. Houston, where he was recuperating from recent Surgery, I had need to contact MacDonald, so I called him on the phone and when he asked, where I was calling from, and was told Hobbs, New Mexico, he, Macdonald, responded that I was in technical

contempt of Court, that Judge Lasker did not have the authority to grant me

contempt of Court; that Judge Lasker did not have the authority to grant me the right to travel to New Mexico as he (Judge Lasker) had assigned the case to Judge Pollack. My response was to ask him why he didn't go ahead and file his contempt? Again a clear declaration on MacDonalds part that he would make the decisions in this action, not some Court! In this instance he (MacDonald), even tried to deny me the right to see my counsel Houston and failing that, tried to intimidate me with the threat of further prosecution, or is the word not PERSECUTION? In this same vein, in New York on the arraignment, MacDonald was advised that Boyds Attorney of choice was in Hobbs, N.M. and his retort was that he couldn't help that; that if I wished to travel out of the S.D. of New York or Texas that I should hire a New York lawyer to come to Court and make the motion--- knowing already from the Grand Jury fiasco that Boyd was Broke!

Upon conviction by Jury the Court Set Bond for Boyd, at $15,000.00, cash or surety. [An inordinately high figure relative to the other convicted Defendants]. The Court, upon oral motion made by trial counsel, allowed Boyd a few days to return to Texas to arrange his sureties. Boyd then returned to Texas, filled out his bond form, got a letter from the taxing authorities, had the sherriff in the County of residence of the Surety to attest as to its sufficiency, traveled to Pecos, Texas and had same Bond approved by the U.S. Magistrate, then sent said Bond to New York Counsel, who, upon presenting same to MacDonald, was told that it was not acceptable. As the Bond met all the requirements as to Law, and further, the Bond had already been approved by the United States Magistrate [who is given that authority by Statute], Boyd instructed Counsel to proceed to Court on the matter. In a hearing before Judge Pollack, with Defendant absent, (I have found no re-

cord of that hearing), it was reported back to Boyd that Judge Pollack had refused the Bond (even though the Bond had already been approved according [to a Federal Magistrate, of Texas,] to all the law Boyd could find on it), and given Boyd an additional few days to produce a bond that was on an "Approved list", of the S. D. of New York or cash. Boyd thereupon journeyed to New York, being told by New York Bondsmen that they would accept property as collateral for the writing of Boyd's Bond. Arriving in New York, Boyd was informed that Texas Real Estate was unacceptable to the New York Bondsmen. Boyd then returned home and arranged for a loan of fifteen thousand dollars and had same Bank wire to the New York bank in favor of the Court. This bank money order was a day or two late; Boyds Counsel was several days late in reporting it to the Government, MacDonald refused to accept it, saying there was no bond for Boyd, that Boyd was a fugitive from Justice. Again Boyd traveled to New York and a hearing where the Court accepted (although reluctantly) the $15,000.00 cash Bond. MacDonald "forgot" to withdraw his Bench Warrant for Boyd's arrest, and even on the date of Boyds return to New York for sentencing, the Marshals were still seeking Boyds arrest! The Warrants were only returned to the Govt. upon the Marshals learning of the remand of Boyd on sentencing. These actions were illegally taken by the Government in violation of the [DUE PROCESS AMENDMENT TO THE CONSTITUTION]. While awaiting Appeal Bond in MCC, New York, the Government started Boyd on the Merry-go-round, assigning him on December 18, 1975, to Sandstone, Minnesota, FCI to begin serving a final judgement of sentence, NOTWITHSTANDING THE FACT THAT BOYD HAD ENTERED HIS NOTICE OF APPEAL and was working hard and fast for his appeal bond in order to commence this appeal brief. FROM DECEMBER 2,1975

THROUGH JANUARY 22, 1976, THE GOVERNMENT PURPOSELY KEPT BOYD ON THE MERRY-GO-ROUND and incommunicado to enable the Government to 'get' its dismissal of Boyd's right to an appeal. THE AUSAs HAVE DONE ALL IN THEIR POWER (and considerable I wouldnt have thought in their power) TO BLOCK BOYD EVEN MAKING THIS APPEAL. We will delve further into this at a later time.

On arriving in Sandstone FCI on January 22,1976, Boyd First learned that AUSA had attained a Court order ordering him (Boyd) to do certain things by January 16, 1976 (already past) or his appeal was forfeited. Boyd, upon learning January 22,1976, that the time for his appeal had expired, immediately appealed this Court order and asked for time to file his appeal, explaining to the Court that he had been held incommunicado, all in violation of his rights under the due process law.

Meanwhile, Attorney Leonard Eisenberg had accompanied AUSA Sussman to the chambers of Judge Milton Pollack on the bond matter , PRIOR to the date of January 16,1976. At this meeting, according to a transcript in Boyds possession, Judge Pollack, after looking in his desk drawer and ascertaining that the proffered bond was, indeed, on a Company on SDNYs approved list, told Sussman, "TAKE THE BOND ! TAKE THE BOND ! " Sussman agreed that he would ' take the bond. ', but after leaving the Judges Chambers, said he would first make sure that the Bond was realy signed by, and authorized by, the people who presented same. Then, on Saturday, Sussman called Eisenberg at home and, though the bond checked out good, informed Eisenberg that the AUSA still refused to accept the Bond; that Boyds time for appeal had run out. And that Boyd had been for some time serving a final sentence.

Boyd then wrote a Pro Se motion asking for an extension of time and to have Court appointed Counsel (also sent a telegram asking for an extension and appointed counsel). The Court, on February2, 1976, granted the extension.

At 5 : 40 PM on February 3, Mrs Bing (Appeals Court) informed Mrs Boyd (wife of Defendant) who by this time had traveled to New York from her home in Texas to try and pierce this veil of illegalities, and unethical maneuvers of the AUSA, that the Appellate Court had granted the Boyd Motion for extension and extended the time for the brief until March 1, 1976.

On February 4, 1976, at 9:30 AM, Mrs Boyd called Miss Korecki in APpeals Courts Clerks office , advising Miss Korecki of Mrs Boyd's conversation with Mrs Bing the preceding day. Miss Korecki stated that she had already ntified Sussman/McDonald of same. Then at 1:15 PM of the same day, Mrs Boyd called Martin Berger (an attorney also trying to get the AUSA to approve the bond) and advised him of her Bing-Korecki conversations. Mr Berger put Mrs Boyd on 'hold', and called McDonald and then came back on the line and told Mrs Boyd that McDonald had told him that the USAs office was still taking the position that Boyds appeal was out and that Boyd was serving a final Conviction and Sentence.

Mrs Boyd then met with Mrs Valentine of the Pro Se division of the appeals Court (2:15 PM February 4,1976) Upon Mrs Valentine reading the transcripts furnished her by Mrs Boyd, she told Mrs Boyd this changes the case; she asked Mrs Boyd to wait for her in the Law Library (this conversation took place in Courthouse, Foley Square)and left, returning in ten or fifteen minutes with a sealed envelope telling Mrs Boyd this is your husbands bond; approved. If you will open the envelope, we can take

copies of the

copies of the same. After copying, Mrs Valentine suggested to Mrs Boyd to record same with the Clerk of the Court and get same to the US Marshals office(in effect, to 'hand carry' it after the run-around she had had with 'them' up to that point.)

Mrs Boyd thereupon called Boyd at Sandstone FCI notifying him that the AUSA had conveniently caused a restriction of travel on the Bond to SDNY; Boyd said to file the bond; Mrs Boyd then filed the bond with the US Marshal and asked the Marshal (a Mr Barefoot, according to Mrs Boyd) to please expedite same and to telex the release orders on Boyd to Sandstone FCI; the Marshal refused to telex, cussing in the presence of Mrs Boyd , saying that wasnt his job and that it had all been done backwards, etc etc. and that he damned sure wasnt going to telex it.

Mrs Boyd then telephoned the authorities in Sandstone and informed them of the release order. They told Mrs Boyd they had to wait for the mail. The release order finally arrived, via USMail, late on February 9, 1976. Boyd was then released (5:30 PM on the 9th) and driven to town to the bus station where he caught a bus to Minneapolis-St Paul and took a plane to New York, arriving there late on the 10th February 1976.

Incidentally, a copy of the Courts orderof Feb 3, 1976 also arrived at Sandstone on Feb 9, Boyds last day there, notifying him that he had until March 1, 1976 to perfect his appeal, a period of nineteen days.

On February 11, 1976, Boyd visited the US Courthouse, Foley Square, trying to get information on this, where he met Mrs Valentine and Miss Korecki, both of whom went out of their way to be helpful; as a matter of fact, both of these ladies are and were real jewels. Without their invaluable assistance, this Defendant would still be wandering a-

round trying to understand this thing. They are the very first employees of any Government agency throughout the Select matter, beginning in January 1970 through the present date , that have acted as though they were available to anyone having difficulties. That alone is an indictment of this type thing.

On February 11, Boyd again sought New York counsel, interviewing Eisenberg and others, to no avail.

On Feb 12 Boyd again visited the Courthouse, making copies of various records and then he checked out the trial transcript from the records clerk (MR Calanic) who informed Boyd that he had no copy of the exhibits, and suggested that Boyd contact the AUSA for that. Friday, 13th February, Boyd found out was still unlucky, as Sussman informed Boyd he only had the original exhibits and that Boyd couldnt have them. Boyd tried other defense council, and still has no copy of exhibits(Even though Boyd had asked in Motion to Court for Appointive Counsel AND copies of ALL documents).

All of the above acts of both the Government and the Court are are a direct violation of Boyds rights under the DUE PROCESS AMEND= MENT TO THE CONSTITUTION and should be just cause for reversal herein as well as actionable before the Grievance Committee of the Bar as respects Sussman and McDonald.

APPELLANT BOYD HEREBY ADOPTS BY REFERENCE THE APPEALS BRIEFS OF ALL OTHER DEFENDANTS TO THIS ACTION.

BRIEF FOR DEFENDANT-APPELLANT JOE TRUMAN BOYD

SEC CONSPIRACY-AGAINST-BOYD

April 1, 1970, the Houston office of the SEC sent a letter to Select advising that Select was under investigation by that body, Boyd Immediately contacted the SEC, Ft. Worth Office, being advised by Houston that the file was transferred there.

In the meantime, the SEC had issued one of their famous "NEWS LETTERS", advising that Select trading would be stopped for a ten day period due to insufficient financial data. Prior to the date of the order called for in the news release, Boyd visited with a Mr. Hewitt and one or two other 'investigators' of the SEC in Ft. Worth and delivered to those gentlemen every scrap of paper that Select had, including copies of the Nevada paper-work, all the deeds, appraisals, Opinions, minutes, etc., and informed the SEC that they would have to come up with something different as an excuse to suspend the trading of Select, as Select had made available all its records and had just completed a Certified statement which had also been made available. Boyd, also informed them that unless they revoked their suspension order, Select would seek injunction relief through the Federal Courts. They then informed Boyd that before the suspension could be revoked that it would be over, the method of revoking requiring certain amounts of red tape etc., and promised Boyd that all harrassment of Select would cease and that Select could continue to trade, notwithstanding their order; that their order would not be enforced even during the ten days. Boyd, under the impression that he could accept the word of these men, who were not only Attorneys, but also were employed by 'his' government; accepted at face value the assurances of these people and let matters rest. However, the brokers refused to trade during this ten day period. [They were already well aware of the perfidy of

of these SEC Beguilers! After the ten day suspension order when the brokers would make an application to the Pink Sheets, they would receive a visit from the SEC and would be advised that the SEC did not want SELECT quoted! When queried concerning this, Hewitt etal. told Boyd that this was not so; that SEC had no interest in Select; that SEC was not talking to Brokers; was not in any form or fashion harassing either Select or the Brokers of Selects stock. The Brokers still refused to go into the sheets, being much wiser than Boyd. Finally, when John Wells made his application to the Sheets and was visited by the SEC and told by them not to trade in Select, Wells in turn told the SEC that if they did not want him to trade in Select to issue a Suspension order; that as long as they (SEC) refused[to issue him a legal reason not to trade that he was going to trade.] For this rash position, Wells had criminal charges brought against him and eventually pleaded guilty, to same, even though when asked by the court, after being well coached by both is own attorney and the prosecutor as to the proper answers to give to the questions on a guilty plea,* the question by the court September 16, 1975, on page 5 of the official transcript of that hearing, Q. What was your Part in this thing ? What did you do? A. Well, I was trading stock. I was being protected so I could not lose any money in trading the stock. Q. It was unregistered stock? A. Yes Sir. Q. You knew that such stock could not lawfully be traded without being registered, did you not? A. [No, your Honor.] I don't think so. Q. Did you know that you were trading in unregistered stock? A.[No, your Honor.]* It would be interesting to know the real reason that John Wells pleaded Guilty. It is a fact that Wells had a very fine Due Diligence on Select, having even made a trip to Texas and discussed the hopes and plans of Select with the maragement of Select, and satisfying himself that it was a good investment ofr his customers.

The harrassment of the SEC with regards to both Boyd & Select was and is a vicious thing. The veiled threats & innuendoes with which was discussed to his many friends and business acquaintances being numerous; the supoenas flying fast & thick to anyone who dared to do business with either Boyd or Select. After the SEC had effectively shot down the entity of Select , they continued their harrassment of Boyd , seeming to know before Boyd what his next venture would be.

In a later business transaction between Boyd and an Attorney in New Mexico, exempt, in Boyds opinion, from the SECs scrutiny, Hewitt in Ft. Worth, his like number in San Francisco, and the State Securities Commissioner from New Mexico, on a conference call with Boyd and three New Mexico attorneys stated that Boyds actions were criminally illegal; Boyd thereupon invited them to the court house, stating that he already had sued Rivera, and would amend making Hewitt etal parties. They were very much in favor of Boyd doing that until Boyd advised them that their part in the suit would be personal and not as employees of the SEC and that he would ask them to come into the New Mexico Court rowing their own boat and leave the SECs Army and Navy at home and that I would try my level best to take personal judgement against them. At that point there was a very sudden withdrawal on the part of counsel for the SEC and they immediately let it be known that they had decided that , after all the matter between Mr. Rivera and Mr. Boyd was private and no business either of themselves or the SEC. That matter then went ahead and culminated to the benefit of Boyd. Thereafter, Boyd began to hear rumors that the SEC was out to get him and put him behind bars! HARRASSMENTS continued, culminating in the New York Indictment, prosecution and conviction!

BRIEF FOR DEFENDANT-APPELLANT JOE TRUMAN BOYD
MISCONDUCT OF COUNSELS
FOR BOYD
"DUE PROCESS AMENDMENT

Defendant Boyd would show the Court that, even though he was without funds; that he did diligently search for counsel for this case sho would be adequate, competent and diligent in the defense of the case. In this regard, Boyd consulted with co-defendants Ford and Webber, as well as attorneys who represented Boyd in other matters in New Mexico, Williams, Johnson, Houston, Regan and Porter. Upon the advice of Glen Houston of the above firm, advice concurred in by the other members of the firm, Boyd decided to seek New York Counsel. In this regard, both Mr. Webber and Mr. Ford suggested I talk with their counsel in New York. I went to New York and consulted with those people and could not satisfy myself with their qualifications. I next went with Webber to San Antonio, Texas and consulted with Attorney Maloney, said by Mr. Webber to be co-counsel with Webbers then counsel, Mr Albert Krieger. Upon advice from Webber & Maloney, I then traveled with Webber to New York, and upon advice of Webbers Attorney Krieger, consulted with Kriegers law partner, Mr Marvin Segal, an attorney of spotless reputation.

Mr Segal advised Boyd of his fee requirements ($50,000.00 for trial work plus an additional $15,000.00 if an appeal were required.) After telephone calls were made to verify the availability to me of that kind of money, I retained Mr Marvin Segal. Segal assured Boyd that he would properly handle the case and that Boyd should return to Texas, to make the necessary arrangements for the money. The arrangements that Boyd had made for this large fee fell apart because of the actions of Webber and his counsel Maloney sueing on the property Boyd was counting on useing as collateral for the fifty thousand dollars.

Trial commenced without counsel Segal ever having a single conference with Boyd about Boyds desires in the matter; the trial proceeded and came to a conclusion in the same manner. On numerous occassions Boyd attempted to consult with Segal relative to the merits of the Govts witnesses, and the documents being introduced by the Govt. In each instance , Segal would let Boyd know in no uncertain words that the only conversation he, Segal, wanted from Boyd was relative to fifty thousand dollars.

On several occassions Boyd called his New Mexico cousel about this matter during the trial and even considered firing Segal and proceeding Pro Se. New Mexico used their influence with Boyd not to change horses in the middle of the stream. At the conclusion of testimony and prior to closing , Boyd again called his New Mexico counsel and suggested that he, Boyd, should close, as the Select story and the facts pertaining thereto still had not been brought to the attention of either the Court or the Jury. Again, Boyd was dissuaded from this course of action. Boyd takes the position that conferences between Boyd and trial counsel would have directed questions on cross that would have proven beyond any doubt that at all times relavant to the Select matter, Boyd worked strictly and excluseively under the presumption and opinion that everything having to do with Select was not only proper & legal & aboveboard, but that everyone concerned, including the SEC had at all times relevant thereto propounded no slightest question as to the free tradeability of the Select stock being used for trading purposes.

Marvin Segal, who had previously represented the defendant Alan Segal, Told Boyd that defendant Segal had assured counsel Segal that everything to do with Select was proper & legal and that Select nor Segal needed no legal repreeentation. Defendant Segal, of course, then made his 'deal' with the Govt, and Boyd understands that it was a fine deal from Segals

viewpoint. Defendant Joiner then made his deal with the Govt, telling Boyd that said deal gave him immunity from prosecution on Pioneer Development, Advance Resources, IRS irregularities, plus blanket immunity on anything else mentioned in AUSA McDonalds presence, and that his, (Joiners) Attn. took this all down. Joiner then perjured himself on the witness stand on cross examination by Segal. Additionally, McDonald, who had given him this immunity, heard him so perjure himself, therefore, AUSA McDonald suborned perjury. Chapel has let it be known that he became a witness in preference to becoming a defendant. Boyd does not know the exact 'pieces of silver' that was received by Wells, but it seemingly was of such quantity to procure his whole hearted assistance even though he did not consider himself guilty of the charges against him.

Pre trial, or even during trial conferences between Attorney Segal and Boyd would have brought forth huge amounts of evidence from the Govts witnesses beneficial to Boyd as well as other Defendants. Again, proper counsel between Boyd and Segal prior to the defense summation could have, and should have caused a not guilty verdict.

Thereafter Segal breached his contract with Boyd and filed motion to withdraw as Boyds counsel for the appeal work, even while Boyd was jailed and unable to make court appearances. Segal was well aware of the uncomfortable circumstances of Boyd , doing his part to see that Boyd did not make his appeal bond.

Boyd then retained one Leonard Eisenberg, New York Attorney, to represent him for purposes of release and to file his brief on appeal. At a later date, Mr Eisenberg denied representation as appeals lawyer, stating that he had only been retained to secure release on bond--which he dii not.

Boyd, being broke and unable to arrange any additional monies , peteitioned the Court, on several occasions, for appointive counsel. These motions were never, to Boyds knowledge, acted upon. Boyd, still being broke and still being unable to find counsel willing to assist in preparation of his appeal, is proceeding, through no desire of his own, Pro Se.

APPELLANT BOYD HEREBY ADOPTS BY REFERENCE THE APPEAL BRIEFS OF ALL OTHER DEFENDANTS TO THIS ACTION.

BRIEF FOR DEFENDANT-APPELLANT JOE TRUMAN BOYD

CONCLUSION

As reported in a transcribed telephone conversation between Appellant Boyd and Joiner in early Novemeber, 1975, ".....my lawyer, Barbara Rollen, or Rolling, or something like that, she said, and she was talking to McDonald and it seems the Judge reamed out McDonald pretty heavy over that thing. Now the best I can remember, what she said was that the trial should not have been tried, even in Ft Worth, much less New York.... there shouldnt of been anybody indicted, or something like that ....." I couldnt agree with more with Joiner, his lawyer and the Judge. Again, quoting from the same source, ".....this is what the lawyer(Barbara) said, "The Judge said to me," it looked like a bunch of boys that was trying to do what was right, but made a blooming fool out of it."....." Again, that pretty well describes it. In this same conversation Joiner reiterates that there was no law broken; that he just made his deal with McDonald to get off the hook on IRS, Advance Resources, etc. He lied on the stand when he answered Trial Counsel Segal and said the only deal he had with the Government was to plead to one count. McDonald heard that answer and did not correct it. APPELLANTS CONVICTION SHOULD BE REVERSED.

PRAYER

Wherefore, Applellant respectfully prays that the judgement of the trial court be reversed and that this court dismiss the indictment against the Appellant.

Respectfully Submitted By

Joe Truman Boyd, Pro Se

Joe Truman Boyd

CERTIFICATE OF MAILING

I do hereby certify that a true and correct copy of the foregoing Brief for Appellant has this 27th day of February, A. D., 1976, been forwarded by the United States mail, postage pre-paid, To Mr Cullen McDonald, Assistant United States Attorney, Federal Courthouse , Foley Square, New York, New York, 10007.

Joe Truman Boyd

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